

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, September 26, 2008
10:00 a.m. to 2:30 p.m.
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable David Mackey
Honorable James E. Chavez	Honorable Margaret Maxwell
Honorable Norman Davis	Honorable Stephen McCarville
Honorable Robert Duber II	Ms. JoJene Mills - <i>telephonic</i>
Honorable Richard S. Fields	Honorable Fred Newton
Honorable Andrew Gould	Honorable Dale Nielson
Honorable Sue Hall - <i>telephonic</i>	Honorable David Mackey
Honorable Charles Harrington	Mr. Paul O'Connell – <i>telephonic</i>
Honorable Bethany Hicks	Mr. Marcus Reinkensmeyer
Honorable Cathy Holt	Mr. David Sanders
Honorable Michael Jeanes	
Honorable Kenneth Lee	

MEMBERS ABSENT:

Honorable Eddward Ballinger	Honorable Colleen McNally
Honorable Patricia Escher	Honorable Stephen Villarreal
Honorable George Foster	

PRESENTERS/GUESTS:

Mr. Paul Hrisho, AOC	Ms. J.L. Doyle, AOC
Ms. Lisa Hernandez, AOC	Ms. Kathy Waters, AOC
Ms. Katy Proctor, AOC	Mr. Karl Heckart, AOC
Ms. Susan Pickard, AOC	Mr. Stewart Bruner, AOC
Ms. Vanessa Haney, AOC	Ms. Patience Huntwork, AOC
Mr. James Westmiller, AOC	Honorable John Rea
Mr. Paul Julien, AOC	Mr. Patrick Scott, AOC
Ms. Linda Grau, AOC	

STAFF:

Ms. Kay Radwanski	Ms. Tama Reily
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the September 26, 2008, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:08 a.m.

Judge Soto announced that Dr. Sylvia Brandfon resigned effective September 15, 2008, creating a vacancy in the public member position. Members were asked to provide Kay with any recommendations they might have for this position.

B. Approval of Minutes

The minutes of the May 30, 2008, meeting of COSC were presented for approval.

MOTION: To approve the minutes of the May 30, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-08-010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Teleconference Etiquette

Paul Hrisho, infrastructure operations manager, AOC, gave the committee some useful tips for holding successful conference phone calls. A handout listing this information was provided in the meeting materials.

Lisa Hernandez, AOC Information Technology Department staff, updated the committee on the status of videoconferencing capabilities at the AOC. She explained that the AOC has several mobile units that can connect directly with various courts throughout the state. There are systems up and running in Tucson, Flagstaff, Yuma, Globe, Payson, Lake Havasu, and Bullhead City. Testing is being conducted in Prescott and in some courts in Navajo County. Courts seeking more information about videoconferencing should contact Ms. Hernandez (602-452-3119) or Rick Collins (602-452-3276). Requests to establish videoconferencing for COSC meetings should be directed to Kay Radwanski, committee staff, who will coordinate the request with the COSC chair and the AOC's ITD staff.

In response to members' questions, Ms. Hernandez explained that with an IP-enabled system, videoconferencing can be used at no cost by persons who are out of state. Videoconferencing also can function with an inexpensive webcam from a desktop if the system is set up properly. Videoconferencing has many uses, including committee meetings and court hearings. Use of videoconferencing can result in reduced travel costs.

B. Arizona Judicial Branch Legislative Package

Katy Proctor, AOC legislative liaison, presented four proposals that will go before the Arizona Judicial Council (AJC) in October.

2009-01 Domestic violence; designation

Replaces all statutory references to “domestic violence” in Arizona Revised Statutes (of which there are at least 233) with the term “domestic victim.” She informed members that this proposal was not supported by the Committee on the Impact of Domestic Violence and the Courts (CIDVC). The committee concurred with CIDVC’s assessment of the proposal and did not favor it.

MOTION: To *oppose* proposal 2009-01 Domestic violence; designation. Motion seconded. Approved unanimously.
COSC-08-011

2009-03 Restitution; orders

Contains provisions for both juvenile and adult restitution orders. Requires the court to issue the signed order and the amount of restitution awarded upon sentencing, when the amount is determined. This is the final restitution order that would be issued. It would also allow restitution to accrue at the statutory rate of 10 percent from that point forward. It would make the court-signed order, at that time, recordable as a lien against the assets of the defendant. This also would be applicable to the juvenile restitution component and would be recordable as a lien not only against the juvenile’s assets but also against the parents’ assets. In addition, this proposal removes the term “custodial” parent from the current law, so the court could order any parent to make restitution on behalf of the juvenile.

Members expressed concern about due process issues for non-custodial parents, implementation issues, the interest rate (e.g., its reasonableness, whether it would accrue while a defendant is incarcerated), innocent co-owners of property against which a lien could be entered, release of lien, and revealing victim identification on a lien.

MOTION: To *oppose* proposal 2009-03 Restitution; orders, as presented. Motion seconded. Approved unanimously.
COSC-08-012

2009-05 Fiduciaries; power of attorney; trustee; representative payee

Would grant to the Supreme Court oversight of a fiduciary serving as a trustee, representative payee, or an agent under a power of attorney (POA), regardless of whether the fiduciary has been court appointed to the case. Prohibits a fiduciary whose license has been suspended or revoked from serving as an agent under a POA in any capacity unless related to the principal. This proposal, advanced by the AOC Certification & Licensing Division, addresses a concern regarding persons who function as fiduciaries under authority of the Fiduciary Board but, when acting

outside that scope as a power of attorney, are not subject to the board's disciplinary process.

MOTION: To approve proposal 2009-05 Fiduciaries; power of attorney; trustee; representative payee. Motion seconded. Approved by an 18-2 vote. COSC-08-013

2009-09 Criminal code sentencing reorganization, cleanup

Makes technical changes in three statutes and conforming changes in one statute contained in the criminal code sentencing reorganization bill passed in the 2008 session.

MOTION: To support proposal 2009-09 Criminal code sentencing reorganization, cleanup, as presented. Motion seconded. Approved unanimously. COSC-08-014

C. Arizona Courts Judicial Jobs Site

Susan Pickard, Vanessa Haney, and James Westmiller, AOC staff, presented the new judicial vacancy website and demonstrated some of the navigational tools. The website is located at <http://www.supreme.state.az.us/azjudicialjobs/>.

D. Appeals Guides for Self-Represented Parties

Paul Julien, AOC Education Services, briefed the committee on the appeals guides developed for self-represented parties. Mr. Julien noted that all limited jurisdiction courts received copies of the guides, and the Arizona Bar Foundation has provided \$2,000.00 to distribute the guides to legal service providers around the state. The guides can be found at <http://supreme.state.az.us/appellateguide.htm>.

E. Code of Conduct

Paul Julien presented the new code of conduct proposed by the Judicial Code Task Force and provided a handout summarizing the proposal. He also invited members to attend one of two public hearings being held to discuss the proposed changes. An invitation with location and other details was included in the meeting materials.

F. ACJA § 7-202: Fiduciaries and ACJA § 7-206: Certified Reporter

Linda Grau of the Certification & Licensing Division discussed proposed amendments to the two code sections.

ACJA § 7-202: Fiduciaries

Suggests both technical and substantive changes to the examination and certification requirements for fiduciaries. Would amend the code of conduct for fiduciaries. Ms. Grau noted that the Fiduciary Board had approved the amendments, except for proposed language requiring a certified fiduciary to have three years of experience under the supervision of a designated principal to qualify as a designated principal.

The committee entertained comments from two public members, both of whom are fiduciaries, who were present at the meeting. (See Public Comments section.) After some discussion, it was suggested that the item be tabled to allow members further time to review the proposal prior to making a recommendation.

MOTION: To table ACJA § 7-202: Fiduciaries and reconsider it at the November meeting. Motion seconded. Vote: 20-1-0.
Approved COSC-08-014

ACJA § 7-206: Certified Reporter

Proposes both technical and substantive changes to requirements of certified reporter programs and education requirements for certified reporters.

MOTION: To approve ACJA § 7-206: Certified Reporter as presented. Motion seconded. Approved unanimously. COSC-08-015

G. ACJA §§ 6-105.01; 6-201.01; and 6-202.01

JL Doyle and Kathy Waters, AOC Adult Probation Services, presented the revised proposed code sections, which outline and clarify the powers and duties of directors of juvenile court services, chief probation officers, probation officers, and surveillance officers. Changes to the code sections were presented to COSC at its May 30, 2008, meeting, at which time the committee suggested additional modifications regarding governance of the provisions.

MOTION: To approve the requirements for governance under ACJA § 6-105.01: Powers and Duties of Officers. Motion seconded. Approved unanimously. COSC-08-016

MOTION: To approve the requirements for governance under ACJA § 6-201.01: Standard Probation as presented. Motion seconded. Approved unanimously. COSC-08-017

MOTION: To approve the requirements for governance under ACJA § 6-202.01: Adult Intensive Probation. Motion seconded. Approved unanimously. COSC-08-018

H. ACJA § 1-507: Protection of Electronic Case Records in Paperless Court Operations

Karl Heckart and Stewart Bruner, AOC Information Technology Department, presented a proposed code section regarding protection of electronic records. The code section sets standards for providing adequate safeguards for equivalent electronic records that are substituted for paper records. The e-Records subcommittees of the Limited Jurisdiction Courts Committee and the Commission on Technology's Technical Advisory Council defined the minimum requirements as the basis for this code section. COT approved the code section at its September 5, 2008, meeting.

MOTION: To approve ACJA § 1-507: Protection of Electronic Case Records in Paperless Court Operations. Motion seconded. Approved unanimously. COSC-08-019

I. *Ad Hoc* Committee Updates

Parenting Plans Workgroup

Judge John Rea updated the committee on the progress the workgroup has made in updating the 2001 edition of the Model Parenting Time Plans. The workgroup met in June and August and will meet again on October 17, 2008. He noted that the group hopes to have the completed product by Spring 2009.

Clerk Research Fee Update

Patrick Scott briefed the committee on the outcome of the workgroup's efforts and provided a handout that detailed the workgroup's proposed recommendations. Patrick asked members to review the information and provide any additional recommendations or feedback to the workgroup.

J. Rule Changes

Patience Huntwork, chief staff attorney, Arizona Supreme Court, reviewed recently adopted rule changes that are pertinent to superior courts. The Arizona Supreme Court met on September 8, 2008, to review the petitions. The court adopted a number of rule changes and kept open six petitions for comment, including a petition regarding adoption of Rules of Procedure for Eviction Actions. Minutes of the September meeting and other information about the rules can be found on the Arizona Court Rules Forum at <http://www.supreme.state.az.us/rules/default.htm>.

Of particular note were R-06-0017, regarding bar admission; R-07-0022, amending uniform interrogatories, and R-08-0008, Civil Cover Sheet. Ms. Huntwork also discussed R-07-0016, which would amend Rule 122, Rules of the Supreme Court, regarding electronic or still photography in courtrooms. The rule establishes a presumption that allows camera coverage of judicial proceedings unless the court makes a finding that there is a substantial likelihood of harm. Members had questions about who would be permitted to bring a camera into a courtroom. For example, one judge received a request from You Tube to bring a camera into the courtroom. The rule does not provide a limiting definition of "media," leaving it open to interpretation. In other discussion, Ms. Huntwork informed members that an *ad hoc* workgroup is being created to review the issues related to Petition R-06-0016, which provides for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings. Members were asked to notify Kay if they are interested in participating on the workgroup, and Commissioner Maxwell volunteered.

III. OTHER BUSINESS

A. Next Meeting:

Friday, November 7, 2008
10:00 a.m. – 3:00 p.m.
State Courts Building
1501 W. Washington
Conference Room 230

B. Good of the Order/Call to the Public

Public Comments:

Candy Wheeler-Ruby, a Yuma County public fiduciary and an Arizona Fiduciary Association board member, expressed her concerns related to the power of attorney aspect of fiduciary responsibilities. She stated it is incorrect that fiduciaries can wait until re-registration to notify their licensing division if they are convicted of a felony; they are required to do so immediately. She explained that this would trigger an investigation, during which their certification is removed. She added that their clients typically are “competent” individuals, and because other family members are sometimes unhappy about the fiduciary’s involvement in the situation, they might complain to the AOC. When the AOC responds and reviews the fiduciary records, the client is unhappy about what he/she feels is an invasion of his/her privacy.

Peter Frenette, a private fiduciary, voiced his concerns with the proposed legislation (see 2009-05, page 3), stating that powers-of-attorneys, trust documents, and representative payees have other remedies for violations. In addition, he noted that training actually is not optional, because, unless a person is certified, he/she is, in essence, not allowed to function at any level, so in reality everyone must become certified. This, he said, puts enormous burden on the administration of a private entity as well as a public entity, and does not allow the fiduciary to have other persons assist in the performance of certain tasks, such as informed consent and contracting.

The meeting was adjourned at 1:31 p.m.